



## **BUREAU OF CONSUMER FINANCIAL PROTECTION**

### **Fair Lending Report of the Consumer Financial Protection Bureau, May 2022**

**AGENCY:** Bureau of Consumer Financial Protection.

**ACTION:** Fair Lending Report of the Consumer Financial Protection Bureau.

**SUMMARY:** The Consumer Financial Protection Bureau (Bureau or CFPB) is issuing its tenth Fair Lending Report of the Consumer Financial Protection Bureau (Fair Lending Report) to Congress. The Bureau is committed to ensuring fair, equitable, and nondiscriminatory access to credit for both individuals and communities. This report describes our fair lending activities in supervision and enforcement; guidance and rulemaking; interagency coordination; and outreach and education for calendar year 2021.

**DATES:** The Bureau released the 2021 Fair Lending Report on its website on May 6, 2022.

**FOR FURTHER INFORMATION CONTACT:** Susan Grutza, Policy Counsel, Fair Lending, at 1-855-411-2372. If you require this document in an alternative electronic format, please contact [CFPB\\_Accessibility@cfpb.gov](mailto:CFPB_Accessibility@cfpb.gov).

### **SUPPLEMENTARY INFORMATION:**

#### **1. Fair Lending Report of the Bureau of Consumer Financial Protection, May 2022**

## *Message from the Fair Lending Director*

Starting and owning a small business is the foundation of dreams and aspirations. There is a certain dignity in knowing the security and love of a stable, safe home in community anchored by individuals and businesses invested in the community's success. Both starting a successful small business and owning one's home are key building blocks of individual and generational wealth. Yet, individuals and communities of color generally face barriers to financing their small businesses and homes that their white counterparts do not experience. These families and communities also own their homes at much lower rates than non-Hispanic whites, and people of color who do own their homes are more likely to be at risk of foreclosure. This is due, in part, to a legacy of structural discrimination which extends to mortgage, auto, student, and other credit markets. The mission of fair lending is to break these discriminatory patterns and practices and to promote access to credit to create fairer markets for all.

This report covers the Consumer Financial Protection Bureau's (CFPB's) fair lending activities during 2021. Much of the CFPB's 2021 work centered on Acting Director Uejio's call for the CFPB to take bold and swift action to address issues of pervasive racial injustice and long-term economic impacts of the COVID-19 pandemic on individuals and communities. In addition, Director Chopra has prioritized the CFPB's foundations of financial inclusion, racial and economic equity, and fair competition. As a result, we focused our fair lending work on issues especially pertinent to people and communities of color and those at risk of losing their housing or unable to access credit for their small businesses. This work took various forms, utilizing all of the CFPB's available tools, and touched nearly every market within our purview.

Notably, this year we brought an enforcement action against Trustmark National Bank (Trustmark) for redlining in the Memphis Metropolitan Statistical Area (MSA). Trustmark discouraged prospective applicants in Black and Hispanic neighborhoods, avoided locating branches or assigning loan officers to these communities, and failed to monitor its fair lending compliance. We continue to examine and investigate entities who are engaged in redlining, as

well as mortgage pricing discrimination. Additionally, public reports of racist practices in the home appraisal industry led us to prioritize resources to ensure that the appraisals used to make lending decisions are accurate and free from bias. Redlining, pricing discrimination, and appraisal bias are significant barriers to fair competition in the mortgage market, impeding the ability of an individual borrower to get credit on fair terms, thus stifling growth in communities across the country.

Home is not only the walls and beams of a house, but also the community that supports it. From the small businesses that anchor our neighborhoods, to the family farms that dot the countryside, these businesses are the drivers of opportunity in a community. In 2021, the CFPB took the significant step of issuing a notice of proposed rulemaking (NPRM) for section 1071 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), to collect certain data on applications for credit for women-owned, minority-owned, and small businesses. The need for this data was highlighted in 2020 and in 2021, as small businesses were hit especially hard by the COVID-19 pandemic, and as Black and Hispanic entrepreneurs faced headwinds in accessing small business credit compared to their white counterparts. The data collection intended with this proposed rule will allow the CFPB, advocates, industry, and other stakeholders to better monitor small business markets and community development needs to foster an inclusive and competitive small business lending market.

Some bad actors target and exploit at-risk communities. In 2021, the CFPB sued Libre by Nexus (Libre) and JPay for engaging in unfair, deceptive, or abusive acts and practices. Libre targeted immigrants held in detention centers for a services scam that traps victims into paying expensive, long-term fees. JPay provided financial services to prisons and jails nationwide, charging unfair fees to their customers. In the United States, incarcerated individuals and individuals reentering society are overwhelmingly men of color. The CFPB will continue to fight discrimination that manifests as unfair, deceptive, or abusive acts and practices.

I am encouraged by the possibility of utilizing vehicles like special purpose credit

programs to expand access to credit, but skeptical of claims that advanced algorithms are the cure-all for bias in credit underwriting and pricing. Home is a place, home is a feeling, home shapes the people our children become. I am proud of what the CFPB achieved in 2021, our tenth year of existence, and I look forward to the future of fair lending and the next ten years, as we continue our work so that entrepreneurs have the pride of owning a successful small business and *all* individuals have the opportunity to know the comfort of a place worth calling home.

Sincerely,

Patrice Alexander Ficklin

## *1. Fair lending supervision and enforcement*

### *1.1 Risk-based prioritization*

Because Congress charged the CFPB with the responsibility of overseeing many lenders and products, the CFPB has long-used a risk-based approach to prioritizing supervisory examinations and enforcement activity. This approach helps ensure that the CFPB focuses on areas that present substantial risk of credit discrimination for consumers.<sup>1</sup>

As part of the prioritization process, the CFPB identifies emerging developments and trends by monitoring key consumer financial markets. If this field and market intelligence identifies fair lending risks in a particular market, that information is used to determine the type and extent of attention required to address those risks.

The prioritization process incorporates a number of additional factors, including tips and leads from industry whistleblowers, advocacy groups, and government agencies; supervisory and enforcement history; consumer complaints; and results from analysis of Home Mortgage Disclosure Act (HMDA) and other data.

As a result of its annual risk-based prioritization process for 2021, in 2021, the CFPB

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<sup>1</sup> For additional information regarding the CFPB's risk-based approach in prioritizing supervisory examinations, see Section 2.2.3, Risk-Based Approach to Examinations, *Supervisory Highlights* Summer 2013, available at [https://files.consumerfinance.gov/f/201308\\_cfpb\\_supervisory-highlights\\_august.pdf](https://files.consumerfinance.gov/f/201308_cfpb_supervisory-highlights_august.pdf).

focused much of its fair lending enforcement and supervision efforts on advancing the CFPB's priorities surrounding racial and economic equity and promoting economic recovery related to the COVID-19 pandemic.

Additionally, the CFPB focused its fair lending supervision efforts on mortgage origination and pricing, small business lending, student loan origination work, policies and procedures regarding geographic and other exclusions in underwriting, and on the use of artificial intelligence (AI) and machine learning models.

As in previous years, the CFPB's 2021 mortgage origination work continued to focus on redlining (and whether lenders intentionally discouraged prospective applicants living in, or seeking credit in minority neighborhoods from applying for credit); assessing whether there is discrimination in underwriting and pricing processes such as steering; and HMDA data integrity and validation reviews (both as standalone exams and in preparation for Equal Credit Opportunity Act (ECOA) exams that will follow).

The CFPB's small business lending work looked to assess whether there are disparities in application, underwriting, and pricing processes, redlining, and whether there are weaknesses in fair lending-related compliance management systems (CMS).

Across multiple markets, the CFPB evaluated whether lenders maintain policies and procedures that exclude certain types of income or exclude property on the basis of geography in underwriting decisions.

The CFPB's student loan origination work included a focus on lenders' policies and practices in underwriting or pricing for fair lending compliance. The CFPB also is expanding its evaluation of AI and machine learning models as used by institutions, including in evaluating applicants for credit.

### *1.2 Fair lending enforcement*

Congress authorized the CFPB to bring actions to enforce the requirements of eighteen enumerated statutes, including ECOA, HMDA, and Unfair, Deceptive, or Abusive Acts or

Practices (UDAAP). The CFPB engages in research, conducts investigations, files administrative complaints, holds hearings, and adjudicates claims through the CFPB's administrative enforcement process. The CFPB also uses its independent litigation authority to file cases in Federal court alleging violations of fair lending laws under the CFPB's jurisdiction. Like other Federal regulators, the CFPB is required to refer matters to the Department of Justice (DOJ) when it has reason to believe that a creditor has engaged in a pattern or practice of lending discrimination.<sup>2</sup>

### *1.2.1 Public enforcement actions*

In 2021, the CFPB announced four fair lending-related enforcement actions. These actions were brought under ECOA as well as other Federal consumer financial laws that protect consumers and ensure fair access to credit, including the Consumer Financial Protection Act of 2010 (CFPA) and the Electronic Fund Transfer Act (EFTA). These actions included Trustmark National Bank (Trustmark); LendUp Loans, LLC (LendUp); JPay, LLC (JPay); and Nexus Services, Inc. (Libre by Nexus).

#### *Trustmark*

On October 22, 2021, the CFPB, together with DOJ, filed a complaint and proposed consent order in the Federal district court for the Western District of Tennessee in settlement of claims against Trustmark, which is headquartered in Jackson, Mississippi.<sup>3</sup> The joint complaint alleged that Trustmark engaged in unlawful discrimination against applicants and prospective applicants, including by redlining majority Black and Hispanic communities in the Memphis MSA and engaged in acts and practices that would discourage prospective applicants from applying for credit in violation of ECOA, Regulation B, and the CFPA. In the joint complaint, DOJ also alleged that Trustmark's conduct violated the Fair Housing Act (FHA).

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<sup>2</sup> See 15 U.S.C. 1691e(h).

<sup>3</sup> Consumer Fin. Prot. Bureau, *Trustmark National Bank*, (<https://www.consumerfinance.gov/enforcement/actions/trustmark-national-bank/>).

The consent order, as entered by the court on October 27, 2021, requires Trustmark to invest \$3.85 million in a loan subsidy program that will offer qualified applicants for credit secured by properties in majority Black and Hispanic neighborhoods in Memphis loans on a more affordable basis than otherwise available from Trustmark; open a new loan production office in a majority Black and Hispanic neighborhood in the Memphis MSA; fund targeted advertising to generate applications for credit from qualified consumers in majority Black and Hispanic neighborhoods in Memphis; and take other remedial steps to improve its fair lending compliance and serve the credit needs of majority Black and Hispanic neighborhoods in the Memphis MSA. The order also requires Trustmark to pay a civil money penalty of \$5 million, \$4 million of which would be remitted as a penalty paid to the Office of the Comptroller of the Currency (OCC) for FHA violations arising from the same conduct alleged in the complaint.

#### *LendUp Loans*

On September 8, 2021, the CFPB filed a lawsuit in the United States District Court for the Northern District of California against LendUp Loans, LLC. LendUp is an online lender offering single-payment and installment loans to consumers.<sup>4</sup> In addition to other violations of consumer protection laws, the CFPB alleged that LendUp failed to timely issue required adverse-action notices and failed to provide accurate denial reasons on its adverse-action notices to thousands of loan applicants, in violation of ECOA and Regulation B, and that these violations also constitute violations of the CFPA.

On December 21, 2021, the CFPB filed a proposed stipulated final judgment and order to settle the lawsuit, which the court entered on December 30, 2021. The order imposes an injunction, prohibiting LendUp from offering or providing consumer credit, or assisting others that are offering or providing consumer credit; from collecting on, selling, or assigning outstanding subject loans, or assisting others in doing so; from selling consumer information; and

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<sup>4</sup> Consumer Fin. Prot. Bureau, *LendUp Loans, LLC*, (<https://www.consumerfinance.gov/enforcement/actions/lendup-loans-llc-2/>).

from making misrepresentations in the sale or collection of consumer debt, or assisting others in doing so. The order also imposes a \$100,000 civil money penalty and requires the payment of \$40.5 million in consumer redress, to be suspended upon payment of the civil money penalty based on LendUp's demonstrated inability to pay.

### *JPay*

On October 19, 2021, the CFPB ordered JPay to pay \$4 million for consumer redress, prohibited JPay from engaging in the illegal conduct found by the CFPB, and required JPay to pay a \$2 million civil money penalty.<sup>5</sup> JPay, headquartered in Miramar, Florida, contracts with Federal, State and local Departments of Corrections around the country to provide financial products and services to incarcerated and formerly incarcerated individuals. JPay provided prepaid cards to formerly incarcerated individuals upon their release from prison or jail (JPay debit release card). The debit release cards contained the balance of funds owed to former inmates upon their release, including their commissary money, as well as any "gate money," which are entitlements provided pursuant to State or local law, policy, or regulation to ease transition to society after release from prison or jail. The CFPB found that JPay violated EFTA and its implementing Regulation E by requiring consumers to establish an account with the particular financial institution that issued the JPay debit release card as a condition of receiving a government benefit, namely their gate money. JPay's violations of EFTA and Regulation E also constituted violations of CFPA. The CFPB also found that JPay engaged in unfair and abusive acts and practices by causing fees to be imposed through its JPay debit release card on consumers who were required to get a JPay debit release card to access the money owed to them at the time of their release from prison or jail. In addition, the CFPB found that JPay violated the CFPA's prohibition against unfair acts and practices by causing some consumers to be charged fees on their JPay debit release card that were not authorized by their cardholder agreements, and

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<sup>5</sup> Consumer Fin. Prot. Bureau, *JPay, LLC*, (<https://www.consumerfinance.gov/enforcement/actions/jpay-llc/>).



the CFPA's prohibition against deceptive acts and practices by misrepresenting fees of some JPay debit release cards.

### *Libre by Nexus*

On February 22, 2021, the CFPB filed a lawsuit against Libre by Nexus (Libre).<sup>6</sup> The CFPB alleges that Libre and its owners operated a scheme through which Libre offers to pay the immigration bonds to secure the release of consumers held in Federal detention centers in exchange for large upfront fees and hefty monthly payments, while concealing or misrepresenting the true costs of its services. Specifically, the CFPB alleges that Libre and its owners engaged in deceptive and abusive acts or practices in violation of the CFPA. The CFPB filed its complaint jointly with the Attorneys General of Virginia, Massachusetts, and New York. The CFPB seeks an injunction, damages or restitution to consumers, disgorgement of ill-gotten gains, and the imposition of civil money penalties.

### *1.2.2 ECOA referrals to the Department of Justice*

The CFPB must refer to DOJ a matter when it has reason to believe that a creditor has engaged in a pattern or practice of lending discrimination in violation of ECOA.<sup>7</sup> The CFPB may refer other potential ECOA violations to DOJ as well.<sup>8</sup> In 2021, the CFPB referred two matters to DOJ about discrimination pursuant to section 706(g) of ECOA. The referrals involved discrimination in mortgage origination policies and mortgage origination pricing based on race and national origin.

### *1.2.3 Implementing enforcement orders*

When an enforcement action is resolved through a public enforcement order, the CFPB (together with other government entities, when relevant) takes steps to ensure that the respondent

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<sup>6</sup> Consumer Fin. Prot. Bureau, *Nexus Services Inc., et al.*, (<https://www.consumerfinance.gov/enforcement/actions/nexus-services-inc-et-al/>).

<sup>7</sup> 15 U.S.C. 1691e(g).

<sup>8</sup> *Id.*

or defendant complies with the requirements of the order. Depending on the specific requirements of individual public enforcement orders, the CFPB may take steps to ensure that borrowers who are eligible for compensation receive remuneration and that the defendant has complied with the injunctive provisions of the order, including implementing a comprehensive fair lending CMS.

#### *1.2.4 Pending fair lending investigations*

In 2021, the CFPB had a number of ongoing and newly opened fair lending investigations of institutions. The CFPB investigated or is actively investigating potential discrimination in several markets, including student lending, payday lending, credit cards, small business lending, mortgage lending, including the unlawful practice of redlining, and discrimination in mortgage pricing exceptions. In 2021, the CFPB also investigated issues with HMDA reporting. The Bureau is looking into potential discriminatory conduct, including under ECOA and unfairness, as well as unlawful conduct targeted at vulnerable populations.

#### *1.3 Fair lending Supervision*

The CFPB's Supervision program assesses compliance with Federal fair lending consumer financial laws and regulations at banks and nonbanks over which the CFPB has supervisory authority. As a result of the CFPB's efforts to fulfill its fair lending mission during 2021, the CFPB initiated 31 fair lending examinations or targeted reviews.

For supervisory communications issued by Supervision during 2021, the most frequently identified issues related to the CFPB's Prioritized Assessments. Through Prioritized Assessments, the CFPB continued to expand its supervisory approach to cover a greater number of institutions than its typical examination schedule allows, gain a greater understanding of industry responses to pandemic-related challenges, and help ensure that entities are attentive to practices that may result in consumer harm. Certain Prioritized Assessments evaluated fair lending risks in the small business lending market.

In 2021, the CFPB issued several fair lending-related Matters Requiring Attention,

directing entities to take corrective actions that will be monitored by the CFPB through follow-up supervisory events. Regarding Prioritized Assessment observations, examiners encouraged small business lenders to consider the fair lending risks associated with participation in the Paycheck Protection Program (PPP), further implementation of the PPP, and in any new lending program, and to evaluate and address any risks.

During 2021, informed by the Director's priority to advance equity using all the tools Congress gave the CFPB, Supervision continued to develop and dedicate resources to those priorities. As a result of this prioritization process, the CFPB focused additional fair lending supervision efforts on various product lines, especially mortgage origination and small business lending.

## *2. Rulemaking and Guidance*

### *2.1 Rulemaking*

As the CFPB focused on racial and economic equity and responding to the COVID-19 pandemic, the CFPB was active in rulemaking activities which are particularly critical for communities and individuals of color, women, and those who struggled to pay their mortgages or access small business loans as a result of the impacts of the COVID-19 pandemic. In 2021, the CFPB also issued an NPRM on section 1071 of the Dodd-Frank Act (section 1071) to collect small business lending data; participated in interagency rulemaking to improve quality control standards for automated valuation models (AVM); and issued a final rule to establish safeguards for mortgage borrowers coming out of COVID-19 related forbearances.

The CFPB publishes an agenda of its planned rulemaking activity biannually, which is available at: <https://www.consumerfinance.gov/rules-policy/regulatory-agenda>.

#### *2.1.1 Small business lending and data collection rulemaking*

In the Dodd-Frank Act, Congress directed the CFPB to adopt regulations governing the collection of small business lending data. Section 1071 amended ECOA to require financial institutions to compile, maintain, and submit to the CFPB certain data on applications for credit

for women-owned, minority-owned, and small businesses.

Congress enacted section 1071 for the purpose of facilitating enforcement of fair lending laws and enabling communities, governmental entities, and creditors to identify business and community development needs and opportunities for women-owned, minority-owned, and small businesses.

On September 1, 2021, the CFPB issued a proposed rule amending Regulation B to implement changes to ECOA made by section 1071.<sup>9</sup> Consistent with section 1071, the CFPB proposed to require covered financial institutions to collect and to report to the CFPB data on applications for credit for small businesses, including those that are owned by women or minorities. The proposal also addresses the CFPB's approach to privacy interests and the publication of section 1071 data; shielding certain demographic data from underwriters and other persons; recordkeeping requirements; enforcement provisions; and the proposed rule's effective and compliance dates.<sup>10</sup>

More information is available at: <https://www.consumerfinance.gov/1071-rule/>, a page compiling key materials related to the section 1071 rulemaking.

### *2.1.1 Automated Valuation Models rulemaking*

The CFPB is participating in interagency rulemaking processes with the Federal Reserve Board (FRB), OCC, Federal Deposit Insurance Corporation (FDIC), National Credit Union Administration (NCUA), and Federal Housing Finance Agency (FHFA) (collectively, the Agencies) to develop regulations to implement the amendments made by the Dodd-Frank Act to the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) concerning automated valuation models. The FIRREA amendments require implementing regulations for quality control standards for AVMs. These standards are designed to ensure a

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<sup>9</sup> The proposal was published in the *Federal Register* on Oct. 8, 2021. See 86 FR 56356.

<sup>10</sup> Additional activity has occurred regarding this issue since the end of this reporting period: the comment period for this proposed rule closed on January 6, 2022.

high level of confidence in the estimates produced by the valuation models, protect against the manipulation of data, seek to avoid conflicts of interest, require random sample testing and reviews, and account for any other such factor that the Agencies determine to be appropriate. In 2021, under the process established by Congress in the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), the CFPB began preparing the SBREFA process to consult with representatives of small entities likely to be affected directly by the regulations the CFPB is considering proposing. To address potential fair lending risk in models, the CFPB is considering proposing a requirement that covered institutions establish policies, practices, procedures, and control systems to ensure that their AVMs comply with applicable nondiscrimination laws. The Agencies will continue to work to develop a proposed rule to implement the Dodd-Frank Act's AVM amendments to FIRREA.<sup>11</sup>

### *2.1.3 2021 Mortgage servicing COVID-19 rule*

On June 28, 2021, the CFPB issued a final rule amending certain provisions in Regulation X to reinforce equitable economic recovery as the Federal foreclosure moratoria were phased out, to help protect borrowers from unwelcome surprises as they exited forbearance, to prevent unnecessary foreclosures, and to support the housing market's smooth and orderly transition to post-pandemic operation.<sup>12</sup> The rule established temporary special safeguards (which expired on January 1, 2022) to help ensure that borrowers were evaluated for all options, including loan modifications and selling their homes. Other temporary protections in the rule, such as a provision permitting mortgage servicers to offer certain COVID-19-related streamlined loan modifications based on the evaluation of an incomplete application, remain in effect. The

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<sup>11</sup> Additional activity has occurred regarding this issue since the end of this reporting period: on February 23, 2022, the CFPB published the *Outline of Proposals and Alternatives Under Consideration for the Small Business Advisory Review Panel for Automated Valuation Model Rulemaking*. More information is available at: <https://www.consumerfinance.gov/about-us/newsroom/cfpb-outlines-options-to-prevent-algorithmic-bias-in-home-valuations/>.

<sup>12</sup> Consumer Fin. Prot. Bureau, *Protections for Borrowers Affected by the COVID-19 Emergency Under the Real Estate Settlement Procedures Act (RESPA), Regulation X* (June 28, 2021), [https://files.consumerfinance.gov/f/documents/cfpb\\_covid-mortgage-servicing\\_final-rule\\_2021-06.pdf](https://files.consumerfinance.gov/f/documents/cfpb_covid-mortgage-servicing_final-rule_2021-06.pdf).

rule covers loans on principal residences and generally excludes small servicers. The rule took effect on August 31, 2021.

## *2.2 Guidance*

The CFPB issues guidance to its various stakeholders in many forms, including interpretive rules, advisory opinions, statements, bulletins, publications such as *Supervisory Highlights*, and other resources to aid in compliance.

In 2021, the CFPB released an interpretive rule confirming that ECOA's prohibitions on sex discrimination extend to sexual orientation and gender identity; a statement on how to best serve those who are limited English proficient; and a bulletin pertaining to supervision and enforcement priorities related to housing insecurity. The CFPB also published three issues of *Supervisory Highlights* and a suite of resources pertaining to HMDA reporting and filing.

### *2.2.1 Interpretive Rule regarding sexual orientation and gender identity*

On March 9, 2021, the CFPB issued an interpretive rule stating that the prohibition against sex discrimination under ECOA and Regulation B includes sexual orientation discrimination and gender identity discrimination.<sup>13</sup> This prohibition also covers discrimination based on actual or perceived nonconformity with traditional sex- or gender-based stereotypes, and discrimination based on an applicant's associations. This interpretive rule explains that lenders cannot discriminate based on sexual orientation or gender identity, and is consistent with the Supreme Court's 2020 decision in *Bostock v. Clayton County, Georgia*, where the Court ruled that the prohibition against sex discrimination in Title VII of the Civil Rights Act of 1964 (Title VII) encompasses sexual orientation discrimination and gender identity discrimination.

### *2.2.2 Statement Regarding the Provision of Financial Products and Services to Consumers with Limited English Proficiency*

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<sup>13</sup>Consumer Fin. Prot. Bureau, *Equal Credit Opportunity (Regulation B), Discrimination on the Bases of Sexual Orientation and Gender Identity* (Mar. 9, 2021), [https://files.consumerfinance.gov/f/documents/cfpb\\_ecoa-interpretive-rule\\_2021-03.pdf](https://files.consumerfinance.gov/f/documents/cfpb_ecoa-interpretive-rule_2021-03.pdf).

On January 13, 2021, the CFPB issued *the Statement Regarding the Provision of Financial Products and Services to Consumers with Limited English Proficiency* (the Statement).<sup>14</sup> In recognition of the unique challenges faced by consumers with limited English proficiency (LEP) in consumer financial markets, the Statement encourages financial institutions to better serve all consumers, regardless of LEP status. The Statement provides principles and guidelines to assist financial institutions in complying with the Dodd-Frank Act, ECOA, and other applicable laws.

### *2.2.3 Bulletin on Supervision and Enforcement Priorities Regarding Housing Insecurity*

On April 1, 2021, the CFPB issued a compliance bulletin warning mortgage servicers to take all necessary steps to prevent a wave of avoidable foreclosures.<sup>15</sup> The Coronavirus Aid, Relief, and Economic Security (CARES) Act provided borrowers with federally-backed mortgages with access to forbearance, and private lenders have also provided similar assistance. Much of this aid expired in the fall. In light of these heightened risks to consumers in need of loss mitigation assistance, the CFPB focused on how mortgage servicers respond to borrower requests for loss mitigation assistance and process loss mitigation applications. The CFPB urged servicers to dedicate sufficient resources and staff to ensure they can communicate clearly with borrowers (including LEP and other vulnerable borrowers), effectively manage borrower requests for assistance, promote loss mitigation, and ultimately reduce avoidable foreclosures and foreclosure-related costs.

### *2.2.4 Supervisory Highlights*

The CFPB's *Supervisory Highlights* reports provide guidance and general information

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<sup>14</sup> Consumer Fin. Prot. Bureau, *Statement Regarding the Provision of Financial Products and Services to Consumers with Limited English Proficiency* (Jan. 13, 2021), [https://files.consumerfinance.gov/f/documents/cfpb\\_lep-statement\\_2021-01.pdf](https://files.consumerfinance.gov/f/documents/cfpb_lep-statement_2021-01.pdf).

<sup>15</sup> Consumer Fin. Prot. Bureau, *Bulletin 2021-02: Supervision and Enforcement Priorities Regarding Housing Insecurity* (Apr. 1, 2021), [https://files.consumerfinance.gov/f/documents/cfpb\\_bulletin-2021-02\\_supervision-and-enforcement-priorities-regarding-housing\\_WHcae8E.pdf](https://files.consumerfinance.gov/f/documents/cfpb_bulletin-2021-02_supervision-and-enforcement-priorities-regarding-housing_WHcae8E.pdf).

about the CFPB's supervisory activities at banks and nonbanks without identifying specific entities. These reports communicate the CFPB's key examination findings and operational changes to the CFPB's supervision program. *Supervisory Highlights* is also a convenient and easily accessible resource for information on the CFPB's recent guidance documents. In 2021, the CFPB published three issues of *Supervisory Highlights*.<sup>16</sup>

Issue 23, *COVID-19 Prioritized Assessments Special Edition* was released on January 19, 2021.<sup>17</sup> This special edition sought to inform the public of observations in the CFPB's Prioritized Assessment supervisory work conducted in 2020 after the sudden onset of the COVID-19 pandemic. The Prioritized Assessments focused on evaluating risks to consumers resulting from the pandemic. Examiners identified several issues in small business lending that may pose fair lending risk. These findings included policies that limited eligibility for PPP loans to existing customers of the institution, and thereby restricted access to PPP loans beyond the eligibility requirements of the CARES Act and orders issued by the Small Business Administration (SBA). Examiners found that these additional requirements or limitations, commonly known as "overlays," may have had a disproportionate impact on a prohibited basis and presented heightened fair lending risk.<sup>18</sup>

On June 29, 2021, the CFPB released the 24<sup>th</sup> edition of *Supervisory Highlights*.<sup>19</sup> The findings included in this report cover examinations completed between January 1, 2020 to December 31, 2020. In one or more institutions, examiners uncovered errors in reporting of HMDA data, often tied to deficient CMS. Offending institutions were required to review, correct, and resubmit their data, as well as enhance their monitoring practices and make

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<sup>16</sup> Issue 23, *COVID-19 Prioritized Assessments Special Edition*; Issue 24, *Summer 2021*; Issue 25, *Fall 2021*.

<sup>17</sup> Consumer Fin. Prot. Bureau, *Issue 23, COVID-19 Prioritized Assessments Special Edition* (Jan. 2021), [https://files.consumerfinance.gov/f/documents/cfpb\\_supervisory-highlights\\_issue-23\\_2021-01.pdf](https://files.consumerfinance.gov/f/documents/cfpb_supervisory-highlights_issue-23_2021-01.pdf).

<sup>18</sup> Examiners did not, however, conduct a full analysis of any institution's overlay, and did not make any determination about whether an institution's use of the overlay complies with ECOA or Regulation B. Examiners encouraged the small business lenders to consider the fair lending risks associated with participation in the PPP, in further implementation of the PPP, and in any new lending program and to evaluate and address any risks.

<sup>19</sup> Consumer Fin. Prot. Bureau, *Issue 25, Fall 2021* (Dec. 8, 2021), <https://www.consumerfinance.gov/data-research/research-reports/supervisory-highlights-issue-24-summer-2021/>.



improvements to their CMS. Examiners also uncovered an institution engaging in the unlawful practice of redlining. The CFPB referred the matter to DOJ and is considering additional actions. The lender plans to undertake remedial and corrective actions regarding this violation, which are under review by the CFPB.

The CFPB released the 25<sup>th</sup> edition of *Supervisory Highlights* on December 8, 2021, covering examinations completed between January 2021 and June 2021.<sup>20</sup> The findings included observations that mortgage lenders violated ECOA and Regulation B by discriminating against African American and female borrowers in the granting of pricing exceptions. In response to these findings, lenders plan to undertake remedial and corrective actions regarding these violations, which are under review by the CFPB. Examiners also found that lenders violated ECOA and Regulation B by improperly inquiring about small business applicants' religion and by considering an applicant's religion in the credit decision. For religious institutions applying for small business loans, lenders utilized a questionnaire which contained explicit inquiries about the applicant's religion. Examiners determined that lenders also denied credit to an applicant identified as a religious institution because the applicant did not respond to the questionnaire. In response to these findings, lenders updated the questionnaire to ensure compliance with ECOA and Regulation B. In addition, lenders also identified affected applicants and provided an offer for each identified applicant to reapply for a small business loan.

All issues of *Supervisory Highlights* are available at:  
<https://www.consumerfinance.gov/compliance/supervisory-highlights/>.

#### *2.2.5 HMDA guidance and resources*

Given the importance of accurately reported HMDA data to the CFPB's fair lending mission, the CFPB maintains a comprehensive suite of resources on its public website to help filers fulfill their reporting requirements under HMDA and Regulation C and to allow others to

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<sup>20</sup>Consumer Fin. Prot. Bureau, *Issue 25, Fall 2021* (Dec. 8, 2021),  
[https://www.consumerfinance.gov/documents/10279/cfpb\\_supervisory-highlights\\_issue-25\\_2021-12.pdf](https://www.consumerfinance.gov/documents/10279/cfpb_supervisory-highlights_issue-25_2021-12.pdf).

evaluate and study mortgage lending. These resources include: an Executive Summary of HMDA rule changes;<sup>21</sup> Small Entity Compliance Guide;<sup>22</sup> Key Dates Timeline;<sup>23</sup> Institutional and Transactional Coverage Charts;<sup>24</sup> Reportable HMDA Data Chart;<sup>25</sup> sample data collection form;<sup>26</sup> FAQs;<sup>27</sup> and downloadable webinars,<sup>28</sup> which provide an overview of the HMDA rule. The CFPB also provides on its website an interactive version of Regulation C that is easier to access and navigate than the printed version of Regulation C.<sup>29</sup>

Together with the Federal Financial Institutions Examination Council (FFIEC),<sup>30</sup> the CFPB also routinely updates its HMDA resources throughout the year to ensure HMDA reporters have the most up-to-date information. For example, in October 2021, the CFPB released the 2022 Filing Instructions Guide<sup>31</sup> and the 2021 Supplemental Guide for Quarterly Filers.<sup>32</sup> Together with the FFIEC, in March 2021, the CFPB also published the 2021 edition of

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<sup>21</sup> Consumer Fin. Prot. Bureau, *Executive Summary of the 2020 Home Mortgage Disclosure Act (Regulation C) Final Rule* (Apr. 16, 2020), [https://files.consumerfinance.gov/f/documents/cfpb\\_hmda\\_executive-summary\\_2020-04.pdf](https://files.consumerfinance.gov/f/documents/cfpb_hmda_executive-summary_2020-04.pdf).

<sup>22</sup> Consumer Fin. Prot. Bureau, *Home Mortgage Disclosure (Regulation C) Small Entity Compliance Guide* (May 2020), [https://files.consumerfinance.gov/f/documents/cfpb\\_hmda\\_small-entity-compliance-guide.pdf](https://files.consumerfinance.gov/f/documents/cfpb_hmda_small-entity-compliance-guide.pdf).

<sup>23</sup> Consumer Fin. Prot. Bureau, *HMDA Rule Key Dates Timeline, January 1, 2020 to December 31, 2022*, [https://files.consumerfinance.gov/f/documents/cfpb\\_hmda-key-dates-timeline-2020-2022.pdf](https://files.consumerfinance.gov/f/documents/cfpb_hmda-key-dates-timeline-2020-2022.pdf).

<sup>24</sup> Consumer Fin. Prot. Bureau, *HMDA Institutional Coverage Chart*, [https://www.consumerfinance.gov/documents/9568/cfpb\\_2020-hmda-institutional-coverage\\_03-2021.pdf](https://www.consumerfinance.gov/documents/9568/cfpb_2020-hmda-institutional-coverage_03-2021.pdf); Consumer Fin. Prot. Bureau, *HMDA Transactional Coverage Chart*, [https://www.consumerfinance.gov/documents/8724/cfpb\\_2020-hmda-transactional-coverage.pdf](https://www.consumerfinance.gov/documents/8724/cfpb_2020-hmda-transactional-coverage.pdf).

<sup>25</sup> Consumer Fin. Prot. Bureau, *Reportable HMDA Data: A Regulatory and Reporting Overview Reference Chart for HMDA Data Collected in 2021*, [https://files.consumerfinance.gov/f/documents/cfpb\\_2021-reportable-hmda-data.pdf](https://files.consumerfinance.gov/f/documents/cfpb_2021-reportable-hmda-data.pdf).

<sup>26</sup> Consumer Fin. Prot. Bureau, *Sample Data Collection Form*, [https://files.consumerfinance.gov/f/documents/201708\\_cfpb\\_hmda-sample-data-collection-form.pdf](https://files.consumerfinance.gov/f/documents/201708_cfpb_hmda-sample-data-collection-form.pdf).

<sup>27</sup> Consumer Fin. Prot. Bureau, *Home Mortgage Disclosure Act FAQs*, <https://www.consumerfinance.gov/compliance/compliance-resources/mortgage-resources/hmda-reporting-requirements/home-mortgage-disclosure-act-faqs/>.

<sup>28</sup> Consumer Fin. Prot. Bureau, *HMDA Webinars*, <https://www.consumerfinance.gov/compliance/compliance-resources/mortgage-resources/hmda-reporting-requirements/webinars/>.

<sup>29</sup> See, *Interactive Bureau Regulations, Regulation C*, <https://www.consumerfinance.gov/rules-policy/regulations/1003/>.

<sup>30</sup> Collectively, the Board of Governors of the Federal Reserve System (FRB), the Federal Deposit Insurance Corporation (FDIC), the National Credit Union Administration (NCUA), the Office of the Comptroller of the Currency (OCC), and the CFPB comprise the Federal Financial Institutions Examination Council (FFIEC). The State Liaison Committee was added to FFIEC in 2006 as a voting member. Federal Fin. Instit. Examination Council, <http://www.ffiec.gov> (last visited Mar. 11, 2022).

<sup>31</sup> Consumer Fin. Prot. Bureau, *Filing instructions guide for HMDA data collected in 2022* (Oct. 2021), <https://s3.amazonaws.com/cfpb-hmda-public/prod/help/2022-hmda-fig.pdf>.

<sup>32</sup> Consumer Fin. Prot. Bureau, *Supplemental Guide for Quarterly Filers for 2022* (Sep. 2021), <https://s3.amazonaws.com/cfpb-hmda-public/prod/help/supplemental-guide-for-quarterly-filers-for-2022.pdf>.

the HMDA Getting it Right Guide.<sup>33</sup> The CFPB also works with the FFIEC to publish data submission resources for HMDA filers and vendors on its Resources for HMDA Filers website, <https://ffiec.cfpb.gov>.

In addition, HMDA reporters can ask questions about HMDA and Regulation C, including how to submit HMDA data, by emailing the CFPB's HMDA Help at [HMDAHelp@cfpb.gov](mailto:HMDAHelp@cfpb.gov). The CFPB also offers financial institutions, service providers, and others, informal staff guidance on specific questions about the statutes and rules the CFPB implements, including ECOA and Regulation B and HMDA and Regulation C, through its Regulation Inquiries platform at [www.reginquiries.consumerfinance.gov](http://www.reginquiries.consumerfinance.gov).

### *3. Stakeholder engagement*

The CFPB robustly engages with external stakeholders including consumer advocates, civil rights organizations, industry, academia, and other government agencies. This engagement comes in varied forms, including broadcasting the CFPB's work and policy priorities through CFPB channels like blogs, videos, press releases, or speeches; reaching out directly to advocates and consumers through website updates, issuing Requests for Information (RFIs), hosting tech sprints, and ordering entities to engage with the CFPB. The CFPB also regularly issues numerous reports analyzing data and market conditions. To further an all-of-government approach to fair lending enforcement, the CFPB also participates in interagency groups. All of these engagements are critical to informing the CFPB's work and broadcasting the CFPB's priorities and recent work to its stakeholders.

#### *3.1 Promoting and broadcasting the fair lending and access to credit mission*

##### *3.1.1 CFPB blog posts, press releases, videos, and other communications*

The CFPB regularly uses blog posts, statements, press releases, videos, guides,

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<sup>33</sup> Federal Fin. Instit. Examination Council, *A Guide to HMDA Reporting, Getting it Right!* (Mar. 22, 2021), <https://www.ffiec.gov/hmda/pdf/2021Guide.pdf>.

brochures, social media, and other tools to timely and effectively communicate with stakeholders. These tools are targeted to individuals, advocates, civil rights organizations, government agencies, small business owners, financial institutions, and other stakeholders to promote and broadcast news and information about emerging fair lending issues, areas of concern, CFPB initiatives, and more.

In 2021, the CFPB published 10 blog posts related to fair lending topics including: the publication of the LEP statement;<sup>34</sup> team presentations from the CFPB's tech sprints;<sup>35</sup> the publication of the 2020 Fair Lending Annual Report;<sup>36</sup> the CFPB's commitment to racial and economic equity;<sup>37</sup> a report analyzing differences in lending patterns for lenders below and above the 100-loan closed-end threshold set by the 2020 HMDA rule;<sup>38</sup> a report on Asian American and Pacific Islanders in the Mortgage Market;<sup>39</sup> the CFPB's prioritization of resources to focus on the role of racial bias in home appraisals;<sup>40</sup> mortgage servicers' communication capabilities and outreach efforts for borrowers;<sup>41</sup> updates to the whistleblower page;<sup>42</sup> and the CFPB's *Amicus* brief in *Fralish v. Bank of America*.<sup>43</sup>

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<sup>34</sup> Kathleen L. Kraninger, *Bureau takes additional steps to foster an inclusive financial system* (Jan. 13, 2021), <https://www.consumerfinance.gov/about-us/blog/bureau-takes-additional-steps-to-foster-an-inclusive-financial-system/>.

<sup>35</sup> Dave Uejio, *Innovation and collaboration: Tech sprints support improvements in consumer notifications and data collection and processing* (Apr. 26, 2021), <https://www.consumerfinance.gov/about-us/blog/innovation-and-collaboration-tech-sprints-support-improvements-consumer-notifications-data-collection-processing/>.

<sup>36</sup> Patrice Alexander Ficklin, Frank Vespa-Papaleo, *Protecting consumers through a pandemic: 2020 Fair Lending Report to Congress* (Apr. 14, 2021), <https://www.consumerfinance.gov/about-us/blog/2020-fair-lending-report-to-congress/>.

<sup>37</sup> Dave Uejio, *Addressing racial inequities in consumer finance markets* (June 2, 2021), <https://www.consumerfinance.gov/about-us/blog/addressing-racial-inequities-consumer-finance-markets/>.

<sup>38</sup> Feng Liu and Alex Rodrigue, *HMDA Threshold Report Blog* (June 14, 2021), <https://www.consumerfinance.gov/about-us/blog/hmda-threshold-report-blog/>.

<sup>39</sup> Alexandra Dobre and Young Jo, *Challenging the Model Minority Myth: A closer look at Asian American and Pacific Islanders in the mortgage market* (July 1, 2021), <https://www.consumerfinance.gov/about-us/blog/challenging-model-minority-myth-asian-american-pacific-islanders-mortgage-market/>.

<sup>40</sup> Patrice Alexander Ficklin, *CFPB Prioritizing Resources Against Racial Bias in Home Appraisals* (July 2, 2021), <https://www.consumerfinance.gov/about-us/blog/cfpb-prioritizing-resources-against-racial-bias-home-appraisals/>.

<sup>41</sup> Consumer Fin. Prot. Bureau, *New rule ensures mortgage servicers provide options to potentially vulnerable borrowers exiting forbearance* (Sep. 30, 2021), <https://www.consumerfinance.gov/about-us/blog/new-rule-ensures-mortgage-servicers-provide-options-potentially-vulnerable-borrowers-exiting-forbearance/>.

<sup>42</sup> Erie Meyer, *CFPB calls tech workers to action* (Dec. 15, 2021), CFPB calls tech workers to action | Consumer Financial Protection Bureau ([consumerfinance.gov](https://www.consumerfinance.gov)).

<sup>43</sup> Seth Frotman, *CFPB is standing up for civil rights protections* (Dec. 17, 2021), <https://www.consumerfinance.gov/about-us/blog/cfpb-standing-up-civil-rights-protections/>.

In 2021, the CFPB also issued 12 press releases related to fair lending and access to credit issues, including: the Libre by Nexus enforcement action;<sup>44</sup> the sexual orientation and gender identity interpretive rule;<sup>45</sup> the Interagency RFI on Artificial Intelligence (AI);<sup>46</sup> the availability of the 2020 HMDA Data;<sup>47</sup> the extension of the comment period for the AI RFI;<sup>48</sup> the proposed small business lending rule;<sup>49</sup> two press releases related to the LendUp enforcement action;<sup>50</sup> the JPay enforcement action;<sup>51</sup> the CFPB's orders to tech giants to turn over information on their payment system plans;<sup>52</sup> the Trustmark enforcement matter;<sup>53</sup> and the RFI to seek input on detecting discrimination in mortgage lending.<sup>54</sup>

In addition, the CFPB produced two fair lending-related videos in 2021, one by Acting

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<sup>44</sup> Consumer Fin. Prot. Bureau, *Consumer Financial Protection Bureau and Virginia, Massachusetts, and New York Attorneys General Sue Libre for Predatory Immigrant-Services Scam* (Feb. 22, 2021), <https://www.consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureau-and-virginia-massachusetts-and-new-york-attorneys-general-sue-libre-for-predatory-immigrant-services-scam/>.

<sup>45</sup> Consumer Fin. Prot. Bureau, *CFPB Clarifies That Discrimination by Lenders on the Basis of Sexual Orientation and Gender Identity Is Illegal* (Mar. 9, 2021), <https://www.consumerfinance.gov/about-us/newsroom/cfpb-clarifies-discrimination-by-lenders-on-basis-of-sexual-orientation-and-gender-identity-is-illegal/>.

<sup>46</sup> Consumer Fin. Prot. Bureau, *Agencies Seek Wide Range of Views on Financial Institutions' Use of Artificial Intelligence* (Mar. 29, 2021), <https://www.consumerfinance.gov/about-us/newsroom/agencies-seek-wide-range-of-views-on-financial-institutions-use-of-artificial-intelligence/>.

<sup>47</sup> Consumer Fin. Prot. Bureau, *2020 HMDA Data on Mortgage Lending Now Available* (Mar. 31, 2021), <https://www.consumerfinance.gov/about-us/newsroom/2020-hmda-data-on-mortgage-lending-now-available/>.

<sup>48</sup> Consumer Fin. Prot. Bureau, *Agencies Extend Comment Period on Request for Information on Artificial Intelligence* (May 17, 2021), <https://www.consumerfinance.gov/about-us/newsroom/agencies-extend-comment-period-on-request-for-information-on-artificial-intelligence/>.

<sup>49</sup> Consumer Fin. Prot. Bureau, *CFPB Proposes Rule to Shine New Light on Small Businesses' Access to Credit* (Sep. 1, 2021), <https://www.consumerfinance.gov/about-us/newsroom/cfpb-proposes-rule-to-shine-new-light-on-small-businesses-access-to-credit/>.

<sup>50</sup> Consumer Fin. Prot. Bureau, *CFPB Sues LendUp Loans for Violating 2016 Consent Order and Deceiving Borrowers* (Sep. 8, 2021), <https://www.consumerfinance.gov/about-us/newsroom/cfpb-sues-lendup-loans-for-violating-2016-consent-order-and-deceiving-borrowers/>; Consumer Fin. Prot. Bureau, *CFPB Shuttles Lending by VC-Backed Fintech for Violating Agency Order* (Dec. 21, 2021), <https://www.consumerfinance.gov/about-us/newsroom/cfpb-shuttles-lending-by-vc-backed-fintech-for-violating-agency-order/>.

<sup>51</sup> Consumer Fin. Prot. Bureau, *CFPB Penalizes JPay for Siphoning Taxpayer-Funded Benefits Intended to Help People Re-enter Society After Incarceration* (Oct. 19, 2021), <https://www.consumerfinance.gov/about-us/newsroom/cfpb-penalizes-jpay-for-siphoning-taxpayer-funded-benefits-intended-to-help-people-re-enter-society-after-incarceration/>.

<sup>52</sup> Consumer Fin. Prot. Bureau, *CFPB Orders Tech Giants to Turn Over Information on their Payment System Plans* (Oct. 21, 2021), <https://www.consumerfinance.gov/about-us/newsroom/cfpb-orders-tech-giants-to-turn-over-information-on-their-payment-system-plans/>.

<sup>53</sup> Consumer Fin. Prot. Bureau, *CFPB, DOJ and OCC Take Action Against Trustmark National Bank for Deliberate Discrimination Against Black and Hispanic Families* (Oct. 22, 2021), <https://www.consumerfinance.gov/about-us/newsroom/cfpb-doj-and-occ-take-action-against-trustmark-national-bank-for-deliberate-discrimination-against-black-and-hispanic-families/>.

<sup>54</sup> Consumer Fin. Prot. Bureau, *CFPB Seeks Input on Detecting Discrimination in Mortgage Lending* (Nov. 16, 2021), <https://www.consumerfinance.gov/about-us/newsroom/cfpb-seeks-input-on-detecting-discrimination-in-mortgage-lending/>.

Director Uejio on racial inequities in consumer finance markets,<sup>55</sup> and one by Fair Lending Director Patrice Ficklin promoting the small business tell your story portal.<sup>56</sup>

On August 17, 2021, the CFPB published a revised Focus on Reentry: Criminal Justice Guide as a part of the CFPB's Your Money, Your Goals financial empowerment resources.<sup>57</sup> The Guide is designed to help frontline staff address the unique challenges of individuals involved in the criminal justice system.

Also, in 2021, the CFPB updated two brochures<sup>58</sup> on credit discrimination, titled Know Your Rights, Credit Discrimination is Illegal and Helping Consumers Spot Credit Discrimination. The brochures target consumers as well as those who work with consumers. The brochures are available in English, Spanish, Chinese, Vietnamese, Korean, Tagalog, Russian, Haitian Creole, and Arabic.

### *3.1.2 CFPB engagements with stakeholders*

The CFPB often engages directly with stakeholders to inform the CFPB's policy decisions and message the CFPB's priorities and recent work. In 2021, CFPB staff participated in 236 stakeholder engagements related to fair lending and access to credit issues. Through speeches, presentations, podcasts, roundtables, webinars, and other smaller discussions on fair lending topics, the CFPB strives to keep abreast of economic and market realities that impact the lives of individuals and communities the CFPB is charged with protecting.

For example, on June 15, 2021, the CFPB hosted a public roundtable to look closer at the role of racial bias in home appraisals.<sup>59</sup> At the roundtable, the CFPB heard from civil rights

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<sup>55</sup> Consumer Fin. Prot. Bureau, *Director's Message: Addressing financial discrimination & racial equity* (June 3, 2021), <https://www.youtube.com/watch?app=desktop&v=tFVyyqVCr1A&feature=youtu.be>.

<sup>56</sup> Consumer Fin. Prot. Bureau, *Share your small business story* (Sep. 1, 2021), <https://www.youtube.com/watch?app=desktop&v=rVti779N8wE&feature=youtu.be>.

<sup>57</sup> Consumer Fin. Prot. Bureau, *Focus on Reentry: Criminal Justice Guide* (July 2021), [https://files.consumerfinance.gov/f/documents/cfpb\\_ymyg\\_reentry\\_supplement.pdf](https://files.consumerfinance.gov/f/documents/cfpb_ymyg_reentry_supplement.pdf).

<sup>58</sup> Consumer Fin. Prot. Bureau, *What protections do I have against credit discrimination?* <https://www.consumerfinance.gov/fair-lending/>.

<sup>59</sup> A recording of the event can be accessed at: <https://www.consumerfinance.gov/about-us/events/archive-past-events/virtual-home-appraisal-bias-event/>.

activists, consumer advocates, and local leaders who see the impacts of these biases in their communities. The roundtable also included partner agencies, including the NCUA, the OCC, and the Department of Housing and Urban Development (HUD). Additionally, Director Chopra hosted other roundtables in 2021 with consumer groups that pertained to fair lending-related issues.

Throughout 2021, numerous other engagements centered around racial and economic equity issues; COVID-19 impacts on consumers; traditional and digital redlining, to include algorithmic bias issues; special purpose credit programs; the section 1071 rulemaking governing small business lending data collection and reporting; HMDA; agricultural and rural lending; student lending; and credit reporting.

### *3.1.3 Website updates*

On September 1, 2021, the CFPB launched a new landing page for small business owners and entrepreneurs. Titled, “Shining a light on small business lending,” the landing page highlights statistics about small businesses and provides numerous resources on how to start and grow a small business for small business owners and entrepreneurs. The landing page also has information about lending discrimination and how ECOA protects small businesses, including minority-owned and women-owned businesses, against discrimination. The page also provides a way for small business owners and entrepreneurs to communicate directly with the CFPB with a “Share your small business story” portal. This portal allows small business owners to share their experiences with trying to get a small business loan. In conjunction with broader small business lending data collection rulemaking efforts (see section 2.1.1), this information will help inform the CFPB’s work to protect small business owners and create a fairer marketplace. The webpage is available at: [consumerfinance.gov/about-us/small-business-lending](https://consumerfinance.gov/about-us/small-business-lending).

In a call to action targeted at tech workers such as engineers, data scientists, and others having detailed knowledge of algorithms and technologies used by industry, on December 15, 2021, the CFPB announced that the whistleblower webpage was redesigned. This redesign

better supports the CFPB's mission in a rapidly evolving consumer financial market, which ensures that all credible tips, including those that involve technology or implicate fair lending, receive appropriate analysis and investigation. The webpage is available at:

<https://www.consumerfinance.gov/enforcement/information-industry-whistleblowers/>.

In May of 2021, the CFPB launched a new racial equity landing page as a resource and repository of racial equity content. The page includes information about the pandemic's effects on underserved communities, housing insecurity issues, as well as the CFPB's responsive work in these areas. This webpage is a resource for individuals, advocates, and others. The webpage is available at: <https://www.consumerfinance.gov/about-us/racial-equity>.

Throughout 2021, the CFPB continued to manage an interagency housing portal which serves as a repository of resources for homeowners, renters, and landlords, available in seven languages. The portal includes a rental assistance finder, which helps renters locate and contact organizations that may be able to provide support for COVID-19 related rent shortfalls, past due utility bills, and moving expenses. The portal also provides resources for those who may have lost their housing. The webpage is available at:

<https://www.consumerfinance.gov/coronavirus/mortgage-and-housing-assistance/>.

### *3.2 Seeking information*

#### *3.2.1 Requests for Information*

On March 29, 2021, the CFPB, the OCC, the FRB, the FDIC, and the NCUA published an RFI seeking information from the public on how financial institutions use AI in their activities, including fraud prevention, personalization of customer services, credit underwriting, and other operations. More specifically, the RFI sought comments to better understand the use of AI, including machine learning, by financial institutions; appropriate governance, risk management, and controls over AI; and challenges in developing, adopting, and managing AI.



On May 17, 2021, the agencies announced that they extended the comment period on the RFI.<sup>60</sup>

The comment period closed on July 1, 2021.

On November 16, 2021, the CFPB issued an RFI seeking input on rules implementing HMDA in order to conduct an assessment of the 2015 HMDA Rule and related amendments.<sup>61</sup>

The CFPB requested public comment on its plans for the assessment as well as certain recommendations and information that may be useful in conducting the planned assessment. The RFI specifically sought information on institutional and transactional coverage; data points; benefits of the new data and disclosure requirements; and operational and compliance costs.

### *3.2.2 HMDA tech sprint: Improving HMDA data submissions and publishing*

On March 22-26, 2021, the CFPB held its second tech sprint which focused on improvements to submitting and publishing HMDA data. Participants in this tech sprint were invited to help create additional tools for users on the HMDA Platform and to develop and document HMDA Platform Applicant Programming Interfaces, known as the “Publications Track.” Alternatively, participants were able to develop additional enhancements to HMDA data products and services, or new ways to interact with existing products, data analysis capabilities, or interfaces to other datasets, known as the “Submissions Track.” Seventeen teams participated during the tech sprint, which concluded with a demonstration day where each team presented their resulting innovations to a panel of experts who reviewed them on creativity and innovation; effectiveness and impact; and market readiness.

Recordings of the team presentations are available at:

<https://www.consumerfinance.gov/rules-policy/innovation/cfpb-tech-sprints/home-mortgage-disclosure-act-tech-sprint/>.

### *3.2.3 Big Tech orders*

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<sup>60</sup>Consumer Fin. Prot. Bureau, *Request for Information and Comment on Financial Institutions’ Use of Artificial Intelligence, including Machine Learning* (May 17, 2021), [https://files.consumerfinance.gov/f/documents/cfpb\\_ai-rfi\\_frn\\_2021-03.pdf](https://files.consumerfinance.gov/f/documents/cfpb_ai-rfi_frn_2021-03.pdf).

<sup>61</sup> Consumer Fin. Prot. Bureau, *Request for Information Regarding the HMDA Rule Assessment* (Nov. 16, 2021), [https://files.consumerfinance.gov/f/documents/cfpb\\_hmda-rule-assessment\\_rfi\\_2021-11.pdf](https://files.consumerfinance.gov/f/documents/cfpb_hmda-rule-assessment_rfi_2021-11.pdf).

On October 21, 2021, the CFPB issued a series of orders pursuant to section 1022(c)(4) of the CFPA to large technology companies (Big Tech) operating payments systems to collect information on their business practices.<sup>62</sup> This information will help the CFPB better understand how these firms use personal payments data and manage data access to users so the CFPB can ensure adequate consumer protection. Specifically, the orders sought information on data harvesting and monetization, access restriction and user choice, and other consumer protections.

### *3.3 Data and reports*

#### *3.3.1 Availability of 2020 HMDA data*

The HMDA data are the most comprehensive publicly available information on mortgage market activity. The data are used by consumer groups, regulators, industry, and others to assess potential fair lending risks and for other purposes.

On March 31, 2021, the CFPB announced the availability of the 2020 HMDA modified loan application register data on the FFIEC's HMDA Platform for approximately 4,400 HMDA filers.<sup>63</sup> These published data contain loan-level information filed by financial institutions, modified to protect privacy.

On June 17, 2021, the FFIEC announced the availability of additional data on 2020 mortgage lending transactions at 4,475 financial institutions reported under HMDA.<sup>64</sup> This data included a total of 48 data points providing information about the applicants, the property securing the loan or proposed to secure the loan in the case of non-originated applications, the transaction, and identifiers.

#### *3.3.2 A Brief Note on General Lending Patterns of Small to Medium Size Closed-*

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<sup>62</sup> Consumer Fin. Prot. Bureau, *Order To File Information On Payments Products* (Oct. 21, 2021), <https://www.consumerfinance.gov/about-us/newsroom/cfpb-orders-tech-giants-to-turn-over-information-on-their-payment-system-plans/>.

<sup>63</sup> Consumer Fin. Prot. Bureau, *2020 HMDA Data on Mortgage Lending Now Available* (Mar. 31, 2021), <https://www.consumerfinance.gov/about-us/newsroom/2020-hmda-data-on-mortgage-lending-now-available/>.

<sup>64</sup> Consumer Fin. Prot. Bureau, *FFIEC Announces Availability of 2020 Data on Mortgage Lending* (June 17, 2021), <https://www.consumerfinance.gov/about-us/newsroom/ffiec-announces-availability-of-2020-data-on-mortgage-lending/>.

### *end HMDA Reporters*

The CFPB released a report analyzing differences in lending patterns for lenders below and above the 100-loan closed-end threshold set by the 2020 HMDA rule.<sup>65</sup> Released on June 14, 2021, the report, though preliminary,<sup>66</sup> found some differences in lending patterns for lenders above and below the threshold. In general, those lenders newly exempted under the 2020 HMDA Rule (i.e., with annual origination volumes that exceed the 25-loan threshold but fall below the 100-loan threshold) do not appear to be more or less likely to lend to Black and non-white Hispanic borrowers than larger volume lenders. There is some evidence that these lenders might be more likely to lend to non-natural persons, i.e. trusts, corporations or partnerships. The analysis also suggests that a higher percentage of their loans are secured by properties in low-to-moderate income census tracts, properties in rural areas, second liens, and investment properties. Their borrowers also appear to have higher incomes than larger lenders' borrowers as well.

### *Data Point: Asian Americans and Pacific Islanders in the Market*

On July 1, 2021, the CFPB released a report examining the differences in mortgage characteristics within the Asian American and Pacific Islanders (AAPI) population.<sup>67</sup> The “Model Minority myth” characterizes this expansive demographic group as a monolithic group, with uniform high achievement and high income, relatively untouched by racial and ethnic discrimination. Using the 2020 HMDA data, the report found that borrowers who identified their AAPI subgroup as Asian Indian or Chinese paid lower interest rates than non-Hispanic white borrowers. In contrast, Hawaiian or Pacific Islanders (HoPIs), as a group, paid higher interest rates and loan costs when compared to other Asian borrowers, with considerable variation within

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<sup>65</sup> Consumer Fin. Prot. Bureau, *A Brief Note on General Lending Patterns of Small to Medium Size Closed-end HMDA Reporters* (June 14, 2021), [https://files.consumerfinance.gov/f/documents/cfpb\\_general-lending-patterns-hmda-reporters\\_report\\_2021-06.pdf](https://files.consumerfinance.gov/f/documents/cfpb_general-lending-patterns-hmda-reporters_report_2021-06.pdf).

<sup>66</sup> The analysis in this report is necessarily limited and preliminary and is not an assessment by the CFPB as to the effectiveness of the thresholds change in meeting HMDA's objectives. Additional analysis is needed to better understand these findings and to explore the impact of the threshold changes on data available for specific markets.

<sup>67</sup> Consumer Fin. Prot. Bureau, *Data Point: Asian American and Pacific Islanders in the Mortgage Market* (July 1, 2021), [https://www.consumerfinance.gov/documents/9852/cfpb\\_aapi-mortgage-market\\_report\\_2021-07.pdf](https://www.consumerfinance.gov/documents/9852/cfpb_aapi-mortgage-market_report_2021-07.pdf).

subgroups of HoPIs. Denial rates varied across AAPI subgroups, with some subgroups and HoPIs being denied at rates similar to denial rates for Black and Hispanic white borrowers, further challenging the myth that the AAPI population does not experience racial and ethnic discrimination in the mortgage market. Even though AAPIs, on average, had lower interest rates, homeownership rates generally lag those of non-Hispanic whites. This lag in homeownership, as well as the variability in denial rates and loan costs, could have implications for the ability of AAPI communities to build wealth and stability.

#### *Data Point: 2020 Mortgage Market Activity and Trends*

On August 19, 2021, the CFPB released a report on residential mortgage lending trends.<sup>68</sup> The report found that the total number of closed-end originations as well as applications increased substantially between 2019 and 2020. Most of the increase was driven by the refinance boom observed in 2020. The report also notes that, while the number of financial institutions reporting 2020 HMDA data declined compared to 2019, the number of closed-end records in 2020 increased compared to the previous year. While mortgage activity generally increased, year over year, significant differences between demographic groups persisted, including higher interest rates and denials among Black and Hispanic consumers in the mortgage market.

#### *Manufactured Housing Finance: New Insights from HMDA Data Report*

On May 27, 2021, the CFPB released a report examining the differences between mortgage loans for site-built homes, mortgage loans for manufactured homes (referred to as “MH mortgages”), and chattel loans for manufactured homes.<sup>69</sup> Comparison of these three financing types finds that borrowers with chattel loans face higher denial rates when applying for

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<sup>68</sup> Consumer Fin. Prot. Bureau, *Data Point: 2020 Mortgage Market Activity and Trends* (Aug. 19, 2021), [https://www.consumerfinance.gov/documents/10009/cfpb\\_2020-mortgage-market-activity-trends\\_report\\_2021-08.pdf](https://www.consumerfinance.gov/documents/10009/cfpb_2020-mortgage-market-activity-trends_report_2021-08.pdf).

<sup>69</sup> Consumer Fin. Prot. Bureau, *Manufactured Housing Finance: New Insights from the Home Mortgage Disclosure Act Data* (Aug. 19, 2021), [https://www.consumerfinance.gov/documents/9806/cfpb\\_manufactured-housing-finance-new-insights-hmda\\_report\\_2021-05.pdf](https://www.consumerfinance.gov/documents/9806/cfpb_manufactured-housing-finance-new-insights-hmda_report_2021-05.pdf).

financing than manufactured housing mortgage and site-built borrowers. When they do get a loan, these borrowers pay higher interest rates than their MH mortgage and site-built counterparts and are also less likely to refinance. Analysis shows that Black, Hispanic, and American Indian and Alaska Native borrowers are more likely to get chattel loans than their non-Hispanic white counterparts, even when controlling for land ownership. Additionally, the market for MH lending—and chattel in particular—is more concentrated among relatively few lenders than the market for mortgages on site-built homes.

*Updated data from National Survey of Mortgage Originations*

On July 29, 2021, the CFPB and the FHFA published updated loan-level data for public use collected through the National Survey of Mortgage Originations. The data provide insights into borrowers' experiences obtaining residential mortgages.

*COVID-19 Special Issue Briefs*

As a result of the COVID-19 pandemic's uneven impacts among individuals and markets, the CFPB released numerous COVID-19 Special Issue Briefs analyzing different consumer and market segments. Two such reports explored and summarized the impacts on the renters and homeowners: *Housing insecurity and the COVID-19 pandemic* and *Characteristics of Mortgage Borrowers During the COVID-19 Pandemic*. Issued March 1, 2021, *Housing insecurity and the COVID-19 pandemic* summarized some of the relevant data and research on the impact of the pandemic on the rental and mortgage market, and particularly its impact on low income and minority households.<sup>70</sup> This report found that as of December 2020, 11 million renter and homeowner households were significantly overdue on their regular housing payments, placing them at heightened risk of losing their homes to foreclosure or eviction. Black and Hispanic households were more than twice as likely to report being behind on their payments than white households.

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<sup>70</sup> Consumer Fin. Prot. Bureau, *Housing insecurity and the COVID-19 pandemic* (Mar. 1, 2021), [https://www.consumerfinance.gov/documents/9512/cfpb\\_Housing\\_insecurity\\_and\\_the\\_COVID-19\\_pandemic.pdf](https://www.consumerfinance.gov/documents/9512/cfpb_Housing_insecurity_and_the_COVID-19_pandemic.pdf).

Another Special Issue Brief, *Characteristics of Mortgage Borrowers During the COVID-19 Pandemic*, was released on May 4, 2021.<sup>71</sup> This report explored the characteristics, including demographics, of mortgage borrowers in forbearance or delinquent during the COVID-19 pandemic. The report used data from the National Mortgage Database, which is a random 1-in-20 sample of closed-end first-lien mortgages in the United States, as reported through March 2021. The data showed that a significant share of these borrowers were minorities, lived in majority-minority tracts, and lived in relatively lower-income areas. Many of these borrowers also may be single-income households, making it more difficult for them to recover from income shocks. A significant share of borrowers also showed distress in terms of non-mortgage products.

### *3.4 Interagency engagement*

Seeking to address current and emerging fair lending risks, the CFPB regularly coordinates with other Federal, State, tribal, county, municipal, and international government entities, policymakers, and the organizations that represent them. Through numerous interagency organizations and taskforces, the CFPB coordinated its 2021 fair lending regulatory, supervisory, and enforcement activities to promote consistent, efficient, and effective enforcement of Federal fair lending laws.

The CFPB, along with the Federal Trade Commission (FTC), HUD, FDIC, FRB, NCUA, OCC, DOJ, and FHFA, constitute the Interagency Task Force on Fair Lending. This Task Force meets regularly to discuss fair lending enforcement efforts, share current methods of conducting supervisory and enforcement fair lending activities, and coordinate fair lending policies. The FDIC is currently the Chair of this Task Force.

Through the FFIEC the CFPB has robust engagements with other partner agencies that

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<sup>71</sup> Consumer Fin. Prot. Bureau, *Characteristics of Mortgage Borrowers During the COVID-19 Pandemic* (May 4, 2021), [https://www.consumerfinance.gov/documents/9695/cfpb\\_characteristics-mortgage-borrowers-during-covid-19-pandemic\\_report\\_2021-05.pdf](https://www.consumerfinance.gov/documents/9695/cfpb_characteristics-mortgage-borrowers-during-covid-19-pandemic_report_2021-05.pdf).

focus on fair lending issues. For example, throughout the reporting period, the CFPB has chaired the HMDA/Community Reinvestment Act (CRA) Data Collection Subcommittee, a subcommittee of the FFIEC Task Force on Consumer Compliance. This subcommittee oversees FFIEC projects and programs involving HMDA data collection and dissemination, the preparation of the annual FFIEC budget for processing services, and the development and implementation of other related HMDA processing projects as directed by this Task Force.

The CFPB also participates in the Interagency Working Group on Fair Lending Enforcement, a standing working group of Federal agencies—with the DOJ, HUD, and FTC—that meets regularly to discuss issues relating to fair lending enforcement. The agencies use these meetings to also discuss fair lending developments and trends, methodologies for evaluating fair lending risks and violations, and coordination of fair lending enforcement efforts.

The CFPB is also a member of the FFIEC’s Appraisal Subcommittee (ASC) that provides Federal oversight of State appraiser and appraisal management company regulatory programs, and a monitoring framework for The Appraisal Foundation and the Federal Financial Institutions Regulatory Agencies in their roles to protect Federal financial and public policy interests in real estate appraisals utilized in federally related transactions.<sup>72</sup> The ASC responsibilities include promoting fairness and equity in valuations.<sup>73</sup>

The CFPB engaged with other agencies on issues of bias in home appraisals through the Property Appraisal and Valuation Equity (PAVE) Taskforce.<sup>74</sup> The PAVE Task Force is chaired by HUD Secretary Marcia Fudge and Assistant to the President for Domestic Policy and Director of the Domestic Policy Council, Ambassador Susan Rice. This Task Force also includes cabinet-level leaders from executive departments and additional members from independent agencies, including the CFPB.

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<sup>72</sup> During the reporting period, the Bureau served as vice chair of the ASC.

<sup>73</sup> The Appraisal Subcommittee includes the FFIEC agencies, HUD, and the FHFA.

<sup>74</sup> Additional activity has occurred regarding this issue since the end of this reporting period: on March 23, 2022, the PAVE taskforce released its final report. The report is available at: <https://pave.hud.gov/sites/pave.hud.gov/files/documents/PAVEActionPlan.pdf>.

In addition to these established interagency organizations, CFPB personnel meet regularly with agency personnel, including with DOJ, HUD, FTC, FHFA, State Attorneys General, and the prudential regulators to coordinate and discuss the CFPB's fair lending work.

#### *4. Amicus program and other litigation*

The CFPB files *amicus*, or “friend-of-the-court,” briefs in significant court cases concerning Federal consumer financial protection laws, including cases involving ECOA. These briefs provide courts with the CFPB's views and help ensure that consumer financial protection statutes are correctly and consistently interpreted.

In 2021, the CFPB and the DOJ, FRB, and FTC filed an *amicus* brief in *Fralish v. Bank of America*, a case in which an individual consumer sued his bank for closing his credit card account without providing an explanation mandated by ECOA. In its defense, Bank of America argued that ECOA only applies when people are applying for credit. The CFPB's jointly filed brief explains that Bank of America's argument is wrong, contradicted by the language and history of the law. ECOA's crucial protections against credit discrimination do not disappear the moment that credit is extended. Instead, ECOA shields existing borrowers from discrimination in all aspects of a credit arrangement and gives consumers the right to an explanation when their application for credit is denied, or when an existing account is terminated, or its terms are unfavorably changed. These “adverse action notices” discourage discrimination and help educate consumers about the reasons for a creditor's decision. Like ECOA's core ban on discrimination, this requirement applies to current borrowers as well as those seeking credit. Information regarding the CFPB's amicus program, including a description of previously filed amicus briefs, is available on the CFPB's website, at [www.consumerfinance.gov/policy-compliance/amicus/](http://www.consumerfinance.gov/policy-compliance/amicus/).

In August 2020, the CFPB was sued in the U.S. District Court for the District of Columbia by the National Community Reinvestment Coalition, *et al.*, over the CFPB's final rule amending Regulation C to raise the loan-volume coverage thresholds for financial institutions



reporting data under HMDA (the 2020 HMDA rule). The Plaintiffs argue that the 2020 HMDA rule violates the Administrative Procedure Act. This litigation is ongoing.

In 2019, the CFPB was sued in the U.S. District Court for the Northern District of California by the California Reinvestment Coalition, *et al.*, regarding the CFPB's obligation to issue rules implementing section 1071. In February 2020, the court approved a stipulated settlement agreement. Among other things, the settlement agreement also provides a process for setting appropriate deadlines for the issuance of a proposed and final rule implementing section 1071. The CFPB has made significant progress with this rulemaking, including timely issuing a notice of proposed rulemaking. For a comprehensive update on 1071 activity, see section 2.1.1 of this report.

## *5. Interagency reporting on ECOA and HMDA*

The CFPB is statutorily required to file a report to Congress annually describing the administration of its functions under ECOA, summarizing public enforcement actions taken by other agencies with administrative enforcement responsibilities under ECOA, and providing an assessment of the extent to which compliance with ECOA has been achieved.<sup>75</sup> In addition, the CFPB's annual HMDA reporting requirement calls for the CFPB, in consultation with HUD, to report annually on the utility of HMDA's requirement that covered lenders itemize certain mortgage loan data.<sup>76</sup>

### *5.1 Reporting on ECOA enforcement*

The enforcement and compliance efforts and assessments made by the eleven agencies assigned enforcement authority under section 704 of ECOA are discussed in this section, as reported by the agencies.

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<sup>75</sup> 15 U.S.C. 1691f.

<sup>76</sup> 12 U.S.C. 2807.

TABLE 1: FFIEC AGENCIES WITH ADMINISTRATIVE ENFORCEMENT OF ECOA<sup>77</sup>






|                |   |   |   |   |   |
|----------------|---|---|---|---|---|
| FFIEC AGENCIES |  |  |  |  |  |
|                | Bureau of Consumer Financial Protection (CFPB)                                    | Federal Deposit Insurance Corporation (FDIC)                                      | Federal Reserve Board (FRB)   | National Credit Union Administration (NCUA)   | Office of the Comptroller of the Currency (OCC)                                     |

TABLE 2: NON-FFIEC AGENCIES WITH ADMINISTRATIVE ENFORCEMENT OF ECOA

|                    |   |   |   |
|--------------------|---|---|---|
| NON-FFIEC AGENCIES |                |    |    |
|                    | Agricultural Marketing Service (AMS) of the U.S. Department of Agriculture (USDA) <sup>78</sup> | Department of Transportation (DOT)  | Farm Credit Administration (FCA)  |
| NON-FFIEC AGENCIES |              |  |  |
|                    | Federal Trade Commission (FTC)  | Securities and Exchange Commission (SEC)  | Small Business Administration (SBA) <sup>79</sup>                                     |

<sup>77</sup> Collectively, the Board of Governors of the Federal Reserve System (FRB), the Federal Deposit Insurance Corporation (FDIC), the National Credit Union Administration (NCUA), the Office of the Comptroller of the Currency (OCC), and the Bureau of Consumer Financial Protection (Bureau) comprise the Federal Financial Institutions Examination Council (FFIEC). The State Liaison Committee was added to FFIEC in 2006 as a voting member. Federal Financial Institutions Examination Council, <http://www.ffiec.gov> (last visited Mar. 30, 2021).

<sup>78</sup> The Grain Inspection, Packers and Stockyards Administration (GIPSA) was eliminated as a stand-alone agency within USDA in 2017. The functions previously performed by GIPSA have been incorporated into the Agricultural Marketing Service (AMS), and ECOA reporting comes from the Packers and Stockyards Division, Fair Trade Practices Program, AMS.

<sup>79</sup> 15 U.S.C. 1691c.

### *5.1.1 Public enforcement actions*

In 2021, of the Federal agencies with ECOA enforcement authority, only the CFPB, together with DOJ, brought public enforcement actions for violations of ECOA.

In October of 2021, the CFPB, together with DOJ, brought a public enforcement action in Federal district court in the Western District of Tennessee against Trustmark, headquartered in Jackson, Mississippi. The joint complaint alleged that Trustmark engaged in unlawful discrimination against applicants and prospective applicants, including by redlining majority Black and Hispanic communities, and engaged in acts and practices directed at prospective applicants that would discourage prospective applicants from applying for credit in violation of ECOA and Regulation B.<sup>80</sup>

Additionally, on September 8, 2021, the CFPB brought a public enforcement action in Northern District of California against LendUp Loans, LLC. In addition to other violations of consumer protection laws, the CFPB alleged that LendUp failed to timely issue required adverse-action notices and failed to provide accurate denial reasons on its adverse-action notices to thousands of loan applicants, in violation of ECOA and Regulation B.

Both the Trustmark and LendUp actions are described further in section 1.2.1 of this report.

### *5.1.2 Number of institutions cited for ECOA/Reg B violations*

In 2021, the FFIEC agencies reported citing 198 institutions with violations of ECOA and/or Regulation B.

### *5.1.3 Violations cited during ECOA examinations*

Among institutions examined for compliance with ECOA and Regulation B, the FFIEC agencies reported that the most frequently cited violations were as follows:

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<sup>80</sup> At the same time, pursuant to the FHA, the OCC issued a consent order with Trustmark, which imposed a \$4 million civil money penalty for failing to provide equal access to residents seeking mortgage loans in majority minority census tracts and high minority census tracts in the Memphis MSA during the period 2014-2016.

TABLE 3: REGULATION B VIOLATIONS CITED BY FFIEC AGENCIES, 2021

| <b>Regulation B Violations: 2021</b>   | <b>FFIEC Agencies Reporting</b>  |
|--|--|
| <p><u>12 CFR 1002.4(a), 1002.7(d)(1): <b>Discrimination</b></u></p> <p>Discrimination on a prohibited basis in a credit transaction; improperly requiring the signature of the applicant’s spouse or other person.</p>   | <p>NCUA,<sup>81</sup></p> <p>FRB,<sup>82</sup></p> <p>OCC,<sup>83</sup></p> <p>CFPB<sup>84</sup></p> |
| <p><u>12 CFR 1002.5(b), 12 CFR 1002.5(c), 12 CFR 1002.5(d): <b>Inquiring about protected class</b></u></p> <p>Inquiring about the race, color, religion, national origin, or sex of an applicant or any other person in connection with a credit transaction, except as permitted in §§ 1002.5(b)(1) and (b)(2), or 1002.8 in the case of a special purpose credit program; requesting any information concerning an applicant’s spouse or former spouse, except as permitted in § 1002.5(c)(2); requesting the marital status of a person applying for individual, unsecured credit, except as permitted in § 1002.5(d)(1) (for credit other than individual, unsecured, a creditor may inquire about the applicant’s marital status, but must only use the terms “married,” “unmarried,” and “separated”); inquiring as to whether income stated in an application is derived from alimony, child support, or separate maintenance payments, except as permitted in § 1002.5(d)(2); or requesting information about birth control practices, intentions concerning</p> | <p>FDIC,<sup>85</sup></p> <p>CFPB<sup>86</sup></p>   |

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<sup>81</sup> 12 CFR 1002.4(a).

<sup>82</sup> 12 CFR 1002.7 (d)(1).

<sup>83</sup> 12 CFR 1002.7 (d)(1).

<sup>84</sup> 12 CFR 1002.4(a).

<sup>85</sup> 12 CFR 1002.5(b)-(d).

<sup>86</sup> 12 CFR 1002.5(b).

|  |  |
|--|--|
| the bearing or rearing of children, or capability to bear children, except as permitted in § 1002.5(d)(3).   |  |
| <p><b><u>12 CFR 1002.6(b)(8), (b)(9): Specific rules concerning use of information</u></b></p> <p>Failure to evaluate married and unmarried applicants by the same standards; in evaluating joint applicants, a creditor shall not treat applicants differently based on the existence, absence, or likelihood of a marital relationship between the parties; a creditor shall not consider race, color, religion, national origin, sex (or an applicant's or other person's decision not to provide the information) in any aspect of a credit transaction.</p> | <p>NCUA,<sup>87</sup></p> <p>CFPB<sup>88</sup></p>   |
| <p><b><u>12 CFR 1002.9(a)(1)(i), (a)(2), (b)(1); (b)(2); (c): Adverse Action</u></b></p> <p>Failure to provide notice to the applicant 30 days after receiving a completed application concerning the creditor's approval of, counteroffer to, or adverse action on the application; failure to provide appropriate notice to the applicant 30 days after taking adverse action on an incomplete application; failure to provide sufficient information in an adverse action notification, including the specific reasons for the action taken.</p>              | <p>FDIC,<sup>89</sup></p> <p>NCUA,<sup>90</sup></p> <p>OCC,<sup>91</sup></p> <p>FRB,<sup>92</sup></p> <p>CFPB<sup>93</sup></p> |
| <p><b><u>12 CFR 1002.13(a)(1): Information for Monitoring Purposes</u></b></p> <p>Failure to request as part of an application for credit for purchase or refinancing of a dwelling occupied or to be occupied by the applicant as a principal residence, where the extension of credit will be secured by the dwelling the following information regarding the applicant(s): ethnicity and</p>  | <p>CFPB</p>  |

<sup>87</sup> 12CFR 1002.6(b)(8).

<sup>88</sup> 12 CFR 1002.6(b)(9)

<sup>89</sup> 12 CFR 1002.9(a)(2); 1002.9(b)(2).

<sup>90</sup> 12 CFR 1002.9(a)(2); 1002.9(b)(2); 1002.9(c).

<sup>91</sup> 12 CFR 1002.9(a)(1)(i); 1002.9(b)(1); 1002.9(b)(2).

<sup>92</sup> 12 CFR 1002.9(a)(1)(i); (a)(2).

<sup>93</sup> 12 CFR 1002.9(a)(1);1002.9(b).

|  |  |
|--|--|
| race; sex; marital status; and age   |  |
| <u>12 CFR 1002.14 (a)(1), (a)(2), (a)(3), (a)(4): Appraisals and Valuations</u><br>Failure to provide appraisals and other valuations. | OCC, <sup>94</sup><br>FDIC <sup>95</sup> |

Among institutions examined for compliance with ECOA and Regulation B, the Non-FFIEC agencies reported that the most frequently cited violations were as follows:

TABLE 4: REGULATION B VIOLATIONS CITED BY NON-FFIEC AGENCIES  
ENFORCING ECOA, 2021

| <b>Regulation B Violations: 2021</b>  | <b>Non-FFIEC<br/>Agencies<br/>Reporting</b> |
|---|---|
| <u>12 CFR 1002.9(a)(1)(i): Adverse Action</u><br>Failure to provide notice to the applicant 30 days after receiving a completed application concerning the creditor's approval of, counteroffer or adverse action on the application; failure to provide sufficient information in an adverse action notification, including the specific reasons for the action taken; failure to provide ECOA notice. | FCA   |
| <u>12 CFR 1002.13: Information for monitoring purposes</u><br>Failure to obtain information for monitoring purposes.  | FCA   |

The AMS and the SBA reported that they received no complaints based on ECOA or Regulation B in 2021. The SEC had nothing to report. The FTC is an enforcement agency and does not conduct compliance examinations.

#### *5.1.4 Referrals to the Department of Justice*

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<sup>94</sup> 12 CFR 1002.14(a)(1); 1002.14(a)(2).

<sup>95</sup> 12 CFR 1002.14(a)(1-4).

The agencies assigned enforcement authority under section 704 of ECOA must refer a matter to DOJ when there is reason to believe that a creditor has engaged in a pattern or practice of lending discrimination in violation of ECOA.<sup>96</sup> They also may refer other potential ECOA violations to DOJ.<sup>97</sup> In 2021, 3 agencies (FDIC, NCUA, and CFPB) made 6 such referrals to DOJ involving discrimination in violation of ECOA. A brief description of those matters follows.

In 2021, the FDIC referred two fair lending matters to DOJ. The first matter involved illegal credit discrimination in the underwriting of private student loans on the prohibited basis of the applicant's race. The second matter involved illegal credit discrimination on the prohibited basis of race by redlining majority Black communities in the origination of residential mortgage loans.

NCUA referred two ECOA matters to DOJ, both involving discrimination on the basis of age. DOJ declined to open an independent investigation and deferred to NCUA for administrative enforcement on both referrals.

As reported in section 1.2.2 above, in 2021, the CFPB referred two matters to DOJ. The referrals involved discrimination in mortgage origination policies and mortgage origination pricing based on race and national origin.

## *5.2 Reporting on HMDA*

The CFPB's annual HMDA reporting requirement calls for the CFPB, in consultation with HUD, to report annually on the utility of HMDA's requirement that covered lenders itemize loan data in order to disclose the number and dollar amount of certain mortgage loans and applications, grouped according to various characteristics.<sup>98</sup> The CFPB, in consultation with HUD, finds that itemization and tabulation of these data furthers the purposes of HMDA.

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<sup>96</sup> 15 U.S.C. 1691e(g).

<sup>97</sup> *Id.*

<sup>98</sup> 12 U.S.C. 2807.

## 6. Conclusion

Throughout 2021, the CFPB worked to ensure that individuals and communities had fair, equitable, and nondiscriminatory access to credit, in accordance with its Congressional mandate through supervision and enforcement actions, research and market monitoring activities, rulemaking and guidance, amicus activity, and consumer education.

The CFPB is looking ahead to the future of financial services markets, which will be increasingly shaped by predictive analytics, algorithms, and machine learning. While technology holds great promise, it can also reinforce historical biases that have excluded too many Americans from opportunities.

In particular, the CFPB will be sharpening its focus on digital redlining and algorithmic bias. As more technology platforms, including Big Tech firms, influence the financial services marketplace, the CFPB will be working to identify emerging risks and to develop appropriate policy responses.

The CFPB is committed to protecting individuals, small businesses, and communities from discrimination, holding institutional and individual bad actors accountable, and ensuring robust and comprehensive ameliorative remedies for violations of the laws under our jurisdiction.

## APPENDIX A: DEFINED TERMS

|      |  |
|------|--|
| AAPI | Asian American and Pacific Islanders                                 |
| AMS  | Agricultural Marketing Service of the U.S. Department of Agriculture |
| AI   | Artificial Intelligence  |



|                |   |
|----------------|---|
| ASC            | FFIEC's Appraisal Subcommittee                            |
| AVM            | Automated Valuation Models                                |
| CARES Act      | Coronavirus Aid, Relief, and Economic Security Act        |
| CFPA           | Consumer Financial Protection Act of 2010                 |
| CFPB           | Consumer Financial Protection Bureau                      |
| CMS            | Compliance Management System                              |
| COVID-19       | Coronavirus Disease/Pandemic 2019                         |
| CRA            | Community Reinvestment Act                                |
| Dodd-Frank Act | Dodd-Frank Wall Street Reform and Consumer Protection Act |
| DOJ            | U.S. Department of Justice                                |
| DOT            | U.S. Department of Transportation                         |
| ECOA           | Equal Credit Opportunity Act                              |
| EFTA           | Electronic Fund Transfer Act                              |
| FCA            | Farm Credit Administration                                |

|                                 |   |
|---------------------------------|---|
| FDIC                            | Federal Deposit Insurance Corporation   |
| FHA                             | Fair Housing Act  |
| FHFA                            | Federal Housing Finance Agency  |
| Federal Reserve Board<br>or FRB | Board of Governors of the Federal Reserve System  |
| FFIEC                           | Federal Financial Institutions Examination Council - the FFIEC member agencies are the Board of Governors of the Federal Reserve System (FRB), the Federal Deposit Insurance Corporation (FDIC), the National Credit Union Administration (NCUA), the Office of the Comptroller of the Currency (OCC), and the Consumer Financial Protection Bureau (CFPB). The State Liaison Committee was added to FFIEC in 2006 as a voting member |
| FIRREA                          | Financial Institutions Reform, Recovery, and Enforcement Act of 1989  |
| FTC                             | Federal Trade Commission  |
| GIPSA                           | Grain Inspection, Packers and Stockyards Administration of the U.S. Department of Agriculture   |
| HMDA                            | Home Mortgage Disclosure Act  |
| HoPI                            | Hawaiian or Pacific Islander  |
| HUD                             | U.S. Department of Housing and Urban Development  |
| LEP                             | Limited English Proficient  |

|        |  |
|--------|--|
| MH     | Manufactured Home  |
| MSA    | Metropolitan Statistical Area                              |
| NCUA   | National Credit Union Administration                       |
| NPRM   | Notice of Proposed Rulemaking                              |
| OCC    | Office of the Comptroller of the Currency                  |
| PAVE   | Property Appraisal and Valuation Equity                    |
| PPP    | Paycheck Protection Program (CARES Act)                    |
| RFI    | Request for Information                                    |
| SBA    | Small Business Administration                              |
| SBREFA | Small Business Regulatory Enforcement Fairness Act of 1996 |
| SEC    | Securities and Exchange Commission                         |
| UDAAP  | Unfair, Deceptive, or Abusive Acts or Practices            |
| USDA   | U.S. Department of Agriculture                             |

### **Signing Authority**

The Director of the Bureau, Rohit Chopra, having reviewed and approved this document,

is delegating the authority to electronically sign this document to Laura Galban, a Bureau Federal Register Liaison, for purposes of publication in the *Federal Register*.

**Laura Galban,**

*Federal Register Liaison, Consumer Financial Protection Bureau.*

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